



New South Wales

Fire and Emergency Services Levy Bill 2017

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to provide for the imposition of a fire and emergency services levy (the *levy*). The levy will be payable on all land (other than government land) that is situated in the area of a council or on Lord Howe Island.

The person liable for the levy will generally be the owner of the land. However, in some cases a lessee of land owned by the Crown or a State owned corporation will be liable for the levy.

The levy is payable in respect of each financial year, starting with the year commencing on 1 July 2017.

There are 2 components to the levy: a fixed component and an ad valorem component.

The fixed component of the levy is a base rate specified in the proposed Act (which can be varied by regulation). The ad valorem component of the levy is calculated by applying an ad valorem rate specified by the Treasurer to the land value of the land. The Treasurer calculates the ad valorem rate in accordance with a formula that takes into account the funding targets of the various emergency services (fire brigades, rural fire brigades and state emergency services).

Both components of the levy vary according to the classification of the land on which the levy is charged.

Land can be classified into the following property sectors under the proposed Act:

- (a) government land,
- (b) public benefit land,
- (c) farmland,
- (d) residential land,

- (e) industrial land,
- (f) commercial land.

Only government land is exempt from the levy.

Councils will be responsible for classifying land in their area into those property sectors.

The levy is to be charged by, and collected by, councils on behalf of the State. Councils will be responsible for recovering the levy along with the rates and charges that they levy under the *Local Government Act 1993*. Councils will be required to account for the levy by paying a proportion of all money collected as rates, charges and levies to the State.

The levy replaces the emergency services contributions that are currently required to be made by insurance companies. Those contributions are abolished by the proposed Act and provision is also made for the winding up of those contribution schemes.

Outline of provisions

Part 1 Preliminary

Part 1 provides for the name and commencement of the proposed Act and defines words and expressions used in the proposed Act.

Part 1 also provides that the proposed Act applies to Lord Howe Island. For that purpose, the Island is taken to be a council area and the Lord Howe Island Board is taken to be a council.

Part 2 Fire and emergency services levy

Part 2 provides for imposition of the levy on all land situated in a council area (other than government land) and other critical aspects of the levy (which are as described in the Overview above).

Part 3 Amount of levy

Part 3 provides for the 2 components of the levy (the fixed component and the ad valorem component).

The fixed component is the base rate for the property sector into which the land is classified. That amount is specified in the proposed Act (but can be varied by regulation).

The ad valorem component is the amount calculated by applying the ad valorem rate specified by the Treasurer for the relevant property sector to the land value of the land on which the levy is charged. In most cases, the land value of land will be the land value specified in a general valuation provided by the Valuer-General. For land on Lord Howe Island and other land that is not currently valued by the Valuer-General, the regulations can specify a land value or method by which land value is determined. The Valuer-General is then required to determine the value of the land on the basis of those regulations.

There will be discounts for vacant land and for land owned by eligible pensioners.

Part 4 Method for calculating ad valorem rate

Part 4 contains detailed provisions about how the Treasurer calculates the ad valorem rate of the levy for each property sector. These calculations are based on the funding target of each emergency services organisation, the collection costs that will be payable under the scheme, the amount of revenue raised from the levy in previous years, and the amount actually spent on emergency services in those years.

Part 5 Classification of land for levy

Part 5 requires councils to classify all land within their area for the purpose of charging the levy. Land can be classified into the following property sectors:

- (a) government land,
- (b) public benefit land,
- (c) farmland,
- (d) residential land,
- (e) industrial land,
- (f) commercial land.

Residential land, industrial land and commercial land can also be sub-classified as vacant land (in which case the levy is discounted).

The Part provides for the criteria for classification and for the classification process. This includes provision for appeals to the Land and Environment Court.

Councils will be required to provide information about their classification and sub-classification decisions to the Valuer-General.

Part 6 Charging and collection of levy by council

Part 6 requires a council to charge the levy on all leviable land in its area. All land is leviable land, other than government land. The procedure for the charging of the levy is similar to the procedure for the charging of rates by the council. The levy is charged annually, but can be paid in quarterly instalments.

The Treasurer has power to approve guidelines relating to the waiver or reduction of the levy because of hardship. The Chief Commissioner of State Revenue (the **Chief Commissioner**) may waive or reduce the levy in accordance with those guidelines. If a person claims a waiver or reduction of the levy dishonestly, the Chief Commissioner can recover the waived amount from that person.

A council can recover an unpaid levy as a debt payable to the council. Levies, when paid, can be held in the council's consolidated fund. A council can enter into arrangements with the Chief Commissioner for the transfer of its debt recovery functions to the Chief Commissioner, in respect of any specified levy or class of levies.

Part 6 also requires the Treasurer to make payments to councils (**collection payments**) to reimburse them for the ongoing cost of collecting and recovering the levy on behalf of the State, responding to or defending appeals against decisions made by councils under the proposed Act and other costs incurred in connection with the proposed Act.

Part 7 Payment of levy to State

Part 7 requires a council to pay a proportion of all relevant payments made to it (that is, payments made for assessed charges or rates, or for assessed levies) to the Chief Commissioner. These amounts are to be paid to the Chief Commissioner in the form of collection instalments. The payments represent the proportion of money collected by councils that is attributable to the levy. The Part sets out how payments are to be calculated, when they are to be made and record keeping requirements. Parts of the *Taxation Administration Act 1996* will apply to those payments as if they were a tax payable by the council. This will enable the Chief Commissioner to assess the amounts payable (if necessary) and to exercise investigation and enforcement functions under that Act in relation to the amounts payable. It will also enable the Chief Commissioner to charge interest on overdue amounts (but not penalty tax).

Part 8 Harmonisation with council rates and charges

Part 8 applies various provisions of the *Local Government Act 1993*, the regulations under that Act and the *Strata Schemes Development Act 2015* to the levy, and to the council's exercise of functions under the proposed Act. The objective is to ensure that the charging of the levy is harmonised, insofar as is practical, with the levying of rates and charges by councils. A council will be able to recover the levy in the same way as it recovers rates and charges (including by selling land).

Part 9 Compliance and enforcement

Part 9 enables the Valuer-General to monitor and review council compliance with their classification obligations under the proposed Act and the Chief Commissioner to monitor and audit council compliance with their financial obligations under the proposed Act. Both officers will be able to give to the Treasurer a certificate (a **compliance certificate**) about their assessment of the council's compliance.

The Treasurer will be able to order a council to remedy or restrain any breach of the proposed Act or to withhold collection payments if a council breaches the Act. The issue of a compliance certificate that specifies compliance issues will be sufficient justification for that action.

Part 10 Miscellaneous

Part 10 contains miscellaneous provisions relating to the levy, including provisions that:

- (a) enable the Treasurer to require specified information about the levy to be included in a levy notice, and
- (b) permit information to be shared by the agencies involved in the administration of the proposed Act, and
- (c) enable the Treasurer to delegate functions under the proposed Act, and
- (d) provide for service of notices under the proposed Act, and
- (e) provide for the application of the *Recovery of Imposts Act 1963* to the levy, and
- (f) enable the making of regulations under the proposed Act.

Schedule 1 Public benefit land

Schedule 1 sets out the criteria for classification of land as public benefit land.

Schedule 2 Industrial land

Schedule 2 sets out the criteria for classification of land as industrial land.

Schedule 3 Savings, transitional and other provisions

Schedule 3 contains savings, transitional and other provisions consequent on the enactment of the proposed Act. The provisions make the levy payable from 1 July 2017. The provisions also:

- (a) validate things done by councils and others in anticipation of the commencement of the scheme, and
- (b) provide for certain matters that may be dealt with by regulation under the proposed Act, pending the making of regulations, and
- (c) set deadlines for initial land classifications under the scheme and adjust the deadlines for other things that must be done in 2017 to facilitate the start of the scheme, and
- (d) permit the Treasurer to add to the revenue target, in the initial period of the scheme, the costs of the Emergency Services Levy Insurance Monitor and the start-up costs of the scheme (which means that those costs can be recouped via the levy).

Schedule 4 Amendment of other legislation

Monitor to investigate overcharging under scheme

Schedule 4.1 amends the *Emergency Services Levy Insurance Monitor Act 2016* to require the Emergency Services Levy Insurance Monitor (the **Monitor**) to investigate and assess overcharging by insurance companies under the existing emergency services contributions scheme. The Monitor will be able to assess whether insurance companies have over-collected levies in the final 2 years of the scheme. If an insurance company is assessed to be liable for an over-collection amount, the insurance company will be required to refund the amount to policy holders or, if that is not practicable, to pay the amount to the State.

The Monitor will also be able to require insurance companies to provide information about emergency services levy reform in invoices or other statements.

Abolition of emergency services contributions

Schedule 4.2, 4.6 and 4.7 amend the following Acts to provide for the abolition of the current emergency services funding scheme and the winding up of that scheme:

- (a) *Fire Brigades Act 1989*,
- (b) *Rural Fires Act 1997*,
- (c) *State Emergency Service Act 1989*.

Under the current scheme, insurance companies are required to make contributions towards emergency services funding. Those contributions will continue to be required for the financial year commencing on 1 July 2016, but are abolished from 1 July 2017. Insurance companies will be required to lodge a final return so that a final assessment can be made of their liability under the scheme. If an insurance company is assessed to have under-contributed in the final year of the scheme, the insurance company will be liable to pay a contribution deficit.

Councils will continue to be required to contribute to emergency services funding. They will continue to be required collectively to contribute 11.7% of the annual funding target for each service.

Other amendments

Schedule 4.3 amends the *Land and Environment Court Act 1979* to provide for appeals against classification and sub-classification decisions by councils under the proposed Act and for judicial review.

Schedule 4.4 and 4.5 make consequential amendments to the *Local Government Act 1993* and the *Local Government (General) Regulation 2005*.

Schedule 4.8 amends the *Taxation Administration Act 1996* to signpost the application of some of the provisions of that Act to collection instalments payable by councils under the proposed Act.

Schedule 4.9 amends the *Valuation of Land Act 1916*:

- (a) to require land valuations that are done for rating and charging purposes, or for the purposes of the levy, to be provided at least once every 3 years (instead of once every 4 years), and
- (b) to make it clear that the Act applies to the levy.